

General Information Letter: Gross revenues are included in the Illinois numerator of the sales factor if the greater portion of the income-producing activity is performed within the State.

March 5, 1999

Dear:

This is in response to your letter dated February 1, 1999. Given the nature of your inquiry and the information you provide, I am responding with a General Information Letter. This is not to be taken as a statement of Department policy or as a binding ruling by the Department. As general information gathered in response to your particular questions, however, I hope that it is helpful to you. See 86 Ill. Adm. Code 1200.120(b) and (c).

In your letter you have stated the following:

This firm represents a New Jersey-based money transmission company. The company has an agent relationship with vendors located in your state. The company receives a service charge for processing the money transmission, a portion of which is retained by the agent as compensation for its services. The remaining is remitted to our company. Our company does not employ any individuals in your state, and the only equipment located in your state is the terminal from which the transaction originates.

We realize your state is an associate member of the Multi-state Tax Commission (MTC), and has adopted MTC business income regulations. Article 4, paragraph 17 of the Multi-state Tax Compact states sales, other than sales of tangible personal property, are in this state if: (a) the income-producing activity is performed in this state; or (b) the income-producing activity is performed both in and outside this state, and the greater portion of the income-producing activity is performed more in this state than any other state, based on the cost of performance. With respect to our client, all costs of production are located in New Jersey. The agent which is located in your state is obviously taxable for its portion of the retained service charge. The issue is, what portion of the service charge which is remitted to our client would be subject to tax in your state since the entire costs of the completion are located in New Jersey?

New Jersey has a regulation which addresses the taxation of service charges. The regulation stipulates twenty-five per cent (25%) of such fees are allocated to the state of origination. Fifty per cent (50%) of such fees are allocated to the state in which services are performed. Twenty-five per cent (25%) of such fees are allocated to the state in which the transaction terminates. Therefore, applying the MTC and New Jersey regulations, it would be our position to allocate twenty-five per cent (25%) of the remitted service charge to your state.

We would like a written acknowledgment if you agree with our interpretation; or, if not, what amount you believe would be taxable in your state.

Response

This letter will address your questions as they relate to the Illinois Income Tax Act. Another section of this office will discuss the sales and use tax implications of your fact pattern.

You seem to have conceded nexus for income tax purposes, which is probably the correct assumption given the nature and extent of your business activities in Illinois. It is normally such a fact-dependent issue, however, that the Department of Revenue will not provide advice on nexus outside of the circumstances of an audit.

The question left is how much of the income from your sales of intangibles, the service charges you receive for making money transmissions, is taxable in Illinois. You correctly point out that sales of intangibles are located inside or outside of this State depending upon where the income producing activity is performed, as measured by cost of production. Your letter doesn't provide detail of the way your service is performed, so it would be very difficult to make a judgment about the costs that are assignable to either state.

Illinois regulations that govern this matter are located at 86 Ill. Admin. Code 100.3370(c)(3)(D)(iii). Enclosed is a copy of that section of the regulations for your information. It can be concluded from your letter, however, that New Jersey regulations will not apply to the Illinois income tax obligation, because Illinois does not follow the percentage breakdown for allocation of service charges that your letter describes.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Kent R. Steinkamp
Staff Attorney -- Income Tax